IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.185 of 1993.

Dated of Decision: November 27, 2007.

State of H.P. …… Appellant.

Versus

Ram Dass and others. ……. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. S.D. Vasudeva, Add. Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents: Mr. Ramakant Sharma, Advocate.

Surinder Singh, J. (oral) :

Heard and gone through the record of the case.

The respondents were tried and acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, for allegedly causing the murder of one Shri Bohra Ram. The State has felt aggrieved by the impugned judgment and has filed the present appeal.

The case of the prosecution, in brief, is that Bohra Ram (deceased) was the younger brother of Ishwar Dass (PW1) and both were residing together in village Makrog with their mother. The respondents belong to another village named Dayoli, which is adjoining to the village of the deceased. The deceased and his brother both used to work as Beldar. On

Whether reporters of local papers may be allowed to see the judgment? Yes.

28.2.1990, Bohra Ram left his house in the morning for his work. In the evening, when his brother Ishwar Dass (PW1) returned from his work, he did not find Bohra Ram in the house. His mother informed that the deceased Bohra Ram had gone towards village Ghagas side, at a distance of about two kilo meters from their house where the accused respondents were doing the business of selling the fish on their Reharis. At about 8.15 p.m., Chint Ram (PW), who was also running a shop at Ghagas came to the house of Ishwar Dass to see the television program and also to hear State assembly election news and informed Ishwar Dass that Bohra Ram was seen by him at 5 p.m. at Ghagas. At about 8.30 PM, when both were watching the television, one Parkash Chand (PW3) of their village came there and told Ishwar Dass that he had seen something unusual, lying on the road, he was afraid of and came running to their house. On hearing this, Ishwar Dass and Chint Ram accompanied him and came to the spot with a torch-light and found Bohra Ram lying in a pool of blood, breathing his last, with injuries on his hand and face. Ishwar Dass (PW1) deputed his cousin Durga Ram (PW9) and Prakash Chand (Pw3) aforesaid to look after Bohra Ram and when he was to leave for the police station. Krishan Lal Dabra (PW4) came there in his Jeep and Ishwar Dass requested him to accompany him to the police station. Both of them went to the Police station and brought the police to the spot. Ishwar Dass made his statement under Section 154 of the Code of

Criminal Procedure Ext.PA, during the night around 12.30 a.m., on the basis of which FIR was formally registered. PW24 Sita Ram Parmar, Inspector/ SHO on visiting the spot found that Bohra Ram had died, thus he filled up the inquest report Ex.PM and prepared site plan Ex.PN and sent the dead body for autopsy to district hospital, Bilaspur. PW 20 Dr. Mrs. Savita Mehta performed the post mortem and noticed sharp edged injuries on the different parts of the body of the deceased as follows:-

"1. Incised wound on left parietal occipital region 4" long ½" wide placed vertically underlying bone fractured Brain matter coming out. Direction of wound was from occipital region towards back of neck.

2. Incised wound 4"x1/2"x1 deep on left cheek in centre. Cutting left ear also in the middle. Direction was from mouth towards left ear.

3. Incised wound on the bridge of nose 1"x1/2" skin deep underlying bone normal. Direction of wound from was from left to right.

4. Incised wound obliquely placed from centre of upper lip to right cheek 4" long ½ wide. The whole of cheek muscle has been cut underlying teeth 2 incisors and one canine dislocated. Direction of wound is from upper lip towards cheek.

5. Incised wound on chin horizontally placed 1" long ¼" wide skin deep. Wound tailing towards right side.

6. Incised wound in centre of neck anteriorly and right side of neck 4" long transversely placed ½" wide and ½" deep wound tailing towards right side Trachea and great blood vessels intact.

7. Incised wound in front of neck 2" below injury No.6. 2"x ½" in size. Wound tailing towards right side.

8. Incised wound placed on back of right hand 4"x ½ "x ½" between lower end of radius and right index finger. Underlying bones are cut.

9. Amputated little left finger and left ring finger. Fingers attached by skin tag only.

10. Incised wound placed vertically behind right ear on neck 4"x ½"x ½" wound tailing towards inferior end.

CRANIUM AND SPINAL CORD.

Walls, ribs and cattilagers, Pleurac, Larynx and trachea, Right lung, Left lung, Pericardium Heart Large vessels, were normal.

ABDOMEN.

Walls, Peritoneum Normal.

Mouth- injuries as descried before.

Larynx and Oesophagus normal.

Stomach and its contents normal. Undigested food present in stomach.

Small intestines and their contents, Large intestines and their contents, Liver, Spleen, Kidney, Bladder, Organs of generation external and internal are normal.

MUSCLES, BONES JOINTS.

Injuries as described before."

In the opinion of the Doctor, the deceased died due to shock caused by multiple injuries. These injuries were antemotem and were sufficient to cause death in the ordinary course of nature.

From the spot, Inspector Sita Ram Parmar aforesaid took blood stained soil into possession vide memo Ex.PB in a tin Ex.P17. Shoes Exts.P18 and P19 were lying near the dead body, which were also taken into possession vide memo Ex.PC. Bhagat Ram ASI (PW23) was deputed by the said Inspector to apprehend the respondents. When he went for their search, he noticed respondents Ram Dass and Rup Lal

coming on a bicycle, who were pointed out to him by PW Prem Lal. He stopped their bicycle and noticed that the front wheel of the said cycle was stained with blood. He removed its wheel alongwith the rim, sealed it and took into possession vide memo Ex.DA on 1.3.1990. On 3.3.1990, respondent Ram Dass made a disclosure statement Ex.PD, pursuant to which he got recovered darat Ex.P20, which was alleged to have been concealed by him at his residence in torn pieces of cloth, in the room, which was also taken into possession vide memo Ex.PE, after preparing its sketch Ex.PF, darat was sealed with seal `S'.

During the investigation, it came to the notice that the motive of the alleged crime by the respondent was that about six months prior to the occurrence the respondent Ram Dass was seen in a compromising condition by Nikka Ram (PW22) with the wife of Ishwar Dass, which fact was brought to the notice of Ishwar Dass aforesaid. At that time, the deceased was working at Chandigarh. When he came back to his village, Nikka Ram told this fact to Bohra Ram also, who advised Ram Dass respondent not to do such an act in future. About 12-15 days prior to murder of Bohra Ram, the deceased had informed him (PW22) that Ram Dass had picked up the quarrel with him and threatened him with dire consequences. In the evening of alleged day of occurrence, the deceased was last seen with the respondents. The respondents also alleged to have made the extra-judicial confession to PW-13

Dhanu Ram. The police recorded the statement of the witnesses. On the completion of the investigation, the challan was presented in the court for trial of the respondents.

Finding a prima-facie case against each of the respondents, they were charge-sheeted but they denied the charge and claimed trial.

To prove their case, the prosecution examined as much as 24 witnesses. The respondents were examined under Section 313 of the Code of Criminal Procedure. Their case was of total denial.

The trial court called upon the respondent to enter upon their defence, but they did not lead any defence.

Upon going through the evidence on record and after hearing the learned counsel for the parties, the learned trial court acquitted the respondents against which the instant appeal has been filed.

Admittedly, there is no direct evidence in the case and the entire case hinges upon the circumstantial evidence, which is compartmentalized as under:-

1. **Motive;**
2. **Last seen;**
3. **Extra judicial confession; and**
4. **Recovery.**

1. **<u>MOTIVE</u>**:

To prove the alleged motive, the prosecution has examined Ishwar Dass (PW1) brother of the deceased, Chint Ram (PW2), Krishan Lal Dabra (PW4), Bakshi Ram (PW6),

Devi Ram (PW7), Durga Ram (PW9), Kishan Chand (PW11) and Tulsi Ram (PW12).

Ishwar Dass (PW1) has made a considerable improvement in his statement before the court. In his cross-examination he has stated that he did not state about seeing the respondent Ram Dass in the compromising condition of his wife to the police earlier, because he was not given any opportunity to narrate this fact. Similarly, Chint Ram (PW2) did not state about the fact of alleged enmity of the respondents with the deceased to the police but he had deposed it for the first time in the court. Krishan Lal Dabra (PW4) has stated that the respondents and deceased were not having cordial relations because about 6-7 months prior to the occurrence. Nikka Ram had visited him and informed that he had seen respondent Ram Dass and the wife of Ishwar Dass in a compromising condition, but he did not tell this fact to anybody for the fear of publicity. On coming to know that the respondents were not keeping good relations with the family of the deceased, on account of the above allegations, he advised to mend his family and not to quarrel, but when he was confronted with his statement under Section 161 of the Code of Criminal Procedure, this fact did not find mentioned there. PW-6 Bakshi Ram and PW-7 Devi Ram also considerably improved their version. They were also confronted with their earlier statements with respect to the alleged motive, which did not find mentioned there. For the

first time, they deposed this fact in the court. The perusal of the statements of PW9 Durga Ram, Kishan Chand (PW11), Tulsi Ram (PW12) and (PW22) Nikka Ram show that they have also improved their version on this aspect and no explanation worth the name has been given by them. Further, these witnesses are close relatives of the complainant. On scrutiny we have found that the above omissions are material contradictions which go to the root of the case. The improved version gives an impression that in order to make a stronger case against their opponents, i.e. the respondents, they have given the prejudicial statements in the court after due deliberations. Thus, in our opinion motive to commit the alleged crime as alleged stands not proved.

Though the motiveless crimes are also crimes, yet in a case, based on the circumstantial evidence, it is an important piece of evidence. If the motive is established, it explains the facts which otherwise remain unexplained.

Now, we proceed to examine the other circumstances put forth to see whether the prosecution was able to connect the respondents with the offence charged.

2. LAST SEEN:

PW-2 Chint Ram was running a tea stall at Ghagas, where the respondents, who are real brothers, were also running their business on their reharis**.** According to him he closed the tea stall around 8 PM on 28.2.1990 and had seen Bohra Ram at Ghagas at about 7.30 P.M. While coming to the

house of Ishwar Dass he had seen respondents Rup Lal and Rattan Lal $1^{1/2}$ K.M. away from Ghagas near the house of Ishwar Dass. But according to PW-1 Ishwar Dass, Chint Ram told him that he had seen Bohra Ram at Ghagas at about 4 P.M.

Further PW-6 Bakshi Ram has stated that on 28.2.1990, he alongwith his brother had gone to Bilaspur in connection with assembly election results, they came to Ghagas at 8 PM. They stayed for four minutes at Ghagas, thereafter they started on foot to their village alongwith Devi Ram (PW7) Bohra Ram (deceased), Rup Lal and Rattan Lal (respondents) through the main road. Rup Lal and Rattan Lal were having a bicycle with them. All of them went together for about one kilo meter, discussing about the elections. Rup Lal and Rattan Lal respondents were going ahead and then came behind. He left their company near the saw mill of Pistu Ram (PW-16) and asked Bohra Ram to accompany him to his house, but he declined. Rattan Lal and Rup Lal went ahead through the main road. Next morning, he came to know about the murder of Bohra Ram. Similar is the statement of his brother Devi Ram (PW7). Pistu Ram and Devi Ram, both are the close relatives of the deceased. When they were confronted with their statements under Section 161 of the Code of Criminal Procedure, the last seen fact was not found mentioned there which is also a material omission.

PW-8 Kuldip Singh has stated that he had seen Ram Dass respondent sitting on the side of the rock around 7 PM on 28.2.1990 he was grazing the cattle near the place, where the dead body of Bohra Ram was subsequently found. Around 8 or 8.15 PM when again he had gone to answer the call of nature out side in the open , Rattan Lal and Rup Lal were seen by him with their bicycle coming from Ghagas side, where respondent Ram Dass was sitting. He heard the cries of Bohra Ram **"MERI MAAN MERE KO MAAR DITTA"**. He shouted thrice and then he got frightened and then he went to the house of Sohan Lal, where he was staying. He stated this fact to Sohan Lal, who did not bother much; according to him he was hard of hearing. Next morning, he saw Rattan Lal and Rup Lal coming from the Ghagas side. He has stated this fact to the police, when they visited the spot. But when he was confronted with his statement under Section 161 of the Code of Criminal Procedure, regarding the fact of grazing, seeing respondent Ram Dass sitting on the stone Rattan Lal and Rup Lal coming with their bicycle, raising cries by Bohra Ram , did not find mentioned therein, for which no cogent explanation has been offered. According to Sita Ram Parmar, Investigating Officer, PW Kuldip Singh aforesaid did not tell that he had told about the above facts to Sohan Lal, therefore, Sohan Lal was not interrogated by him.

Further PW-16 Pistu Ram has stated that he had seen Ram Dass respondent at the site of murder around 7.15 PM

on 28.2.1990. He did not speak to him on account of the previous enmity as his wife had filed a case against him, which was pending in the court. He had also stated this fact for the first time in the court. According to him, the dead body of Bohra Ram was lying on the back side of his (deceased) house. Had Bohra Ram raised alarm aforesaid, then it should have been heard by the occupants of his house, which were nearby. Therefore, his testimony also does not inspire confidence. As already stated above, PW-14 Ram Pal, PW-16 Pistu Ram had seen the accused with the deceased, but according to Ram Pal, while he was coming from Ghagas about 7 PM, after closing his shop and was walking at Jukhala road, he had met Ram Dass nearby the house of Sohan Lal. At that time, he was having a blanket and half bottle of liquor. Ram Dass respondent has invited him to the site, but he declined. Ram Dass informed him that he has some important work and was waiting for his brother, but he was confronted with his earlier statement, wherein he had given time of meeting him at 5.30 PM instead of 7 PM as stated, whereas, PW-16 Pistu Ram also stated having seen Ram Dass sitting around 7.15 PM, as aforesaid but he did not speak to him as he did not tell it to the police when his statement was recorded, also makes the story of last seen doubtful have no reliance can be put on the aforesaid testimonies. These statements are also otherwise inconsistent in view of the fact that Chint Ram (PW) has stated that he had left Ghagas

around 8 PM after closing his shop and went on the scooter to the house of Ishwar Dass. When he had to follow the same route as was followed by the respondents and deceased then it is strange that no one had met him on the way. Even, When Devi Ram, (PW) had left Ghagas towards his house, the shop of Chint Ram was open, which means when Devi Ram, Bohra Ram, Bakshi Ram, Rup Lal, Rattan Lal had already left Ghagas, naturally Chint Ram and even for that matter should have met them on their way, because they were going to the same place and direction .

Thus due to the above glaring contradictions, improvements and embellishments the case of the prosecution regarding this circumstance also does not inspire confidence and it gives an impression of total biasness of prosecution witnesses towards the respondents.

EXTRA JUDICIAL CONFESSION:

The prosecution has examined only Dhanu Ram (PW13) to prove the extra-judicial confession made by the respondents. According to him, they had come to his house at about 3 AM, during the same night and told him that they had killed Bohra Ram and they be saved and the matter be got compromised. They were ready to pay about 5,000/- to 7,000/- to the family of Bohra Ram. He told them that they should leave the place being the murderers and the matter would not be compromised, then they left the place. Thereafter he came to the spot and saw that Bohra Ram was

dead. He went to the police station, where, he told this fact to the police. It is evident from the record that on 4th, he had given the statement to the police that the respondent had come to him the previous night and confessed, whereas the police had already reached the spot during the intervening night of 28th February/ Ist March, 1990. He was also confronted with his earlier statement made to the police where the fact of offering the amount of Rs.5,000/- to Rs.7,000/- for effecting the compromise was not made .

On critical examination of the above statement, we find that the witness has not only improved his version in the court considerably but also gave juxtapose and untrue version that after visiting the spot he went to the police station to report the matter when the police was already available on the spot as aforesaid. If his version was true, then why even on 4th March, 1990, this witness omitted to state about the offer made by the respondents to compromise the matter for Rs 5000/- or 7000/- as aforesaid. The theory of extrajudicial confession is also not free from doubt. Therefore, it cannot be acted upon in absence of any corroboration.

RECOVERY:

As far as recoveries are concerned, according to ASI Bhagat Ram (PW23) when he was searching the accused, Ram Dass and Rup Lal were coming on their bicycle and they were pointed out by Prem Lal (PW). He stopped them and examined bicycle. He found blood stains on its front wheel,

which was taken in to possession by him vide memo Ex.DA on 1.3.1990, in the presence of Durga and Prem Lal. According to PW9 Durga, all the accused were arrested by police at 6 AM on 1.3.1990, which fact has been denied by PW-23 Bhagat Ram. In the cross-examination, Durga aforesaid has stated that the bicycle was brought from the shop of a mechanic by a constable and did not say that Ram Dass and Rup Lal were coming on the bicycle, who were stopped by PW-23 Bhagat Ram as stated above . Further PW-10 Prem Lal has stated that a Constable was sent alongwith Kuldip and Rattan Lal respondents, who brought the bicycle to the spot, he did not know from which place the cycle was brought. Though he has admitted his signatures on the recovery memo Ex.DA, but he did not know what was written therein. Further according to him, this document was prepared around 12 noon. When the contents of the documents were read over to him, he had denied its correctness. It is worth mentioning that Prem Lal was an Ex-police head constable, who had put in 20 years of service in the police department and also remained as Investigating Officer, even he also appears to have been ditched. as far as recovery of darat Ext.P20 is concerned, is also not free from any doubt, for the reasons that Ram Dass respondent is alleged to have made disclosure statement Ex.PD, in the presence of Kishan Chand (PW11) and Tulsi Ram (PW12) regarding recovery on 1.3.1990. Tulsi Ram (PW12) in his cross-examination has stated that all the three

accused had made the disclosure statements in his presence that darat was kept in their room. To this effect, statements of Rup Lal and Rattan Lal were also recorded, which were signed by him and all the three accused on the spot of recovery. All of them went inside the room alongwith Kishan Chand (PW) and signed the recovery memo and came back and then corrected himself that only Ram Dass has signed the recovery memo. At the time of recovery of darat, the mother of the accused and their grand mother were also present.

Another witness is PW11 Kishan Chand who has stated that the respondents were arrested about 4-5 a.m., on 1.3.1990. The respondents made the disclosure statement Ex.PD regarding darat and pursuant to that recovery of darat was made which was blood stained. In his cross-examination, he has stated that he alongwith Tulsi Ram were called to police station at bout 12 noon or 1 p.m. They remained there for one hour. Rup Lal and Rattan Lal had made statement that Ram Dass had kept hidden darat in their room and on this statement, signatures were obtained after the recovery and Tulsi Ram also signed the recovery memo of darat. It is pertinent to mention that PW4 Krishan lal Dabra has stated in his examination –in- chief that he was informed by Inspector Sita Ram Parmar that the accused were already arrested and the weapon of offence, bicycle, clothes, gandasa and darat were already effected from the accused.

In view of these discrepancies, contradictions, inconsistencies and loopholes, in our considered opinion, the recovery of alleged weapon of offence and that of blood stained wheel of the bicycle is a fabricated one thus worth rejecting..

On the critical examination of each and every fact and circumstance, put forth by the prosecution, we have found that the circumstances put forth are neither proved in accordance with law nor these of conclusive nature and tendency to connect the respondents with the offence charged.

Therefore, after examining the impugned judgment, we do not find any perversity therein. The conclusion drawn are based upon the proper appreciation of evidence. Accordingly, we uphold the acquittal of the respondents and dismiss the appeal.

The respondents are discharged of their bail bonds, entered upon by them at any stage during the proceeding of this case.

The matter stands accordingly disposed of.

(Surjit Singh)
Judge

November 27, 2007. **(Surinder Singh)**
(Pds) **Judge.**